Supreme Court, U. S.
FILED
OCT 8 1975
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IN THE

Supreme Court of the United States

October term, 1975

NO. 75-330

VIJAY V. SATOSKAR, and All Others Similarly Situated,

Petitioners,

—vs—

INDIANA REAL ESTATE COMMISSION; THOMAS DICKSON, EXECUTIVE SECRETARY; WARD DUNCAN, WILLIAM SCHMIDT, CURTIS HUBER, HARLEY SNYDER, WILLIAM LONG, JAMES BOBILYA, DAVID FAIR, CARL MILLER, REX BREEDEN, DON McCULLOGH, EUGENE McCLAIN, FRED KELLY, WAYNE SMELTZER, MEMBERS OF THE BOARD OF DIRECTORS OF THE INDIANA REAL ESTATE COMMISSION; STATE OF INDIANA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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McCLAIN, FRED KELLY, WAYNE SMELTZER,
MEMBERS OF THE BOARD OF DIRECTORS OF
THE INDIANA REAL ESTATE COMMISSION;
STATE OF INDIANA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, Indiana Real Estate Commission; Thomas Dickson, Executive Secretary; Ward Duncan, William Schmidt, Curtis Huber, Harley Snyder, William Long, James Bobilya, David Fair, Carl Miller, Rex Breeden, Don McCullogh, Eugene McClain, Fred Kelly, Wayne Smeltzer, Members of the Board of Directors of the Indiana Real

Estate Commission; and State of Indiana, respectfully pray this court to deny issuance of a writ of certiorari, and to affirm the judgment of the United States Court of Appeals for the Seventh Circuit (hereafter Seventh Circuit) entered in *Satoskar v. Indiana Real Estate Commission,* (7th Cir., 1975) 517 F.2d 696.

OPINION BELOW

The opinion of the Seventh Circuit is reported as *Satoskar v. Indiana Real Estate Commission* (7th Cir., 1975) 517 F.2d 696, and has been appended to the Petition for Writ of Certiorari as Appendix A. The opinion of the United States District Court for the Southern District of Indiana, Indianapolis Division (hereafter District Court), entered on September 11, 1974, has not been reported at this time, but has been appended to this Brief in Opposition at pages A-1 through A-5. The Partial Judgment of the Three Judge District Court has not been reported but is appended hereto at pages A-7 through A-11.

JURISDICTION

Petitioner alleges jurisdiction in this Court "under 28 U.S.A. [sic] § 1254 (1)." However, Petitioner has not shown this Court which of the applicable paragraphs of Rule 19 of the Rules of this Court apply to the Petition for Writ of Certiorari (hereafter Petition).

The Respondents would assert that there is no jurisdiction in this Court to issue the writ prayed for since there is no federal question involved and since no descision was issued in conflict with applicable decisions of this Court.

QUESTION PRESENTED FOR REVIEW

The respondents would assert that the issue presented to this Court is:

1. Whether the Seventh Circuit erred in affirming the District Courts' denial of fees to Petitioner's attorney?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eleventh Amendment to the Constitution of the United States provides:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

42 U.S.C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

I.

Nature of the Case

This petition, filed by Plaintiff below, arises from a case where the Seventh Circuit affirmed the District Court's denial of a request for an award of attorney fees

to Petitioner's attorney in a case brought pursuant to 42 U.S.C. §1983.

II.

Course of Proceedings Below

Plaintiff filed his "Complaint for Declaratory Judgment, Injunctive Relief and Damages" as an alleged class action on February 22, 1972. Said complaint was researched, drafted and filed by the Indiana Civil Liberties Union, seeking relief under 42 U.S.C. § 1983.

On February 24, 1972, the Defendants (Respondents herein) filed a Motion to Dismiss with supporting Memorandum asserting: the Absention Doctrine; that the complaint failed to state a claim upon which relief could be granted; and that the Complaint, as filed, violated the Ninth, Tenth and Eleventh Amendments to the Constitution of the United States. On March 2, 1972, Defendants filed a "Supplemental Memorandum in Support of Motion to Dismiss Under the Doctrine of Abstention."

On March 9, 1972, Plaintiff amended his complaint to change the damage count from One Hundred Thousand Dollars ($100,000.00) "to reasonable damages for the class." Also on March 9, 1972, the Plaintiff filed his "Reply to Defendants Supplemental Brief on Abstention Encompassing Recent Circuit Court Cases."

On April 19, 1972, the District Court entered its "Entry" dismissing the class action, denying Plaintiff's motion for temporary restraining order, granting Defendant's motion to dismiss in part by dismissing the claim for money damages, costs and reasonable attorney's fee, and took the abstention argument under advisement. The District Court entered an order on May 19, 1972, abstaining from deciding

the merits of the case until the Indiana State Courts had considered the issue.

On appeal, The Seventh Circuit, on May 24, 1973, held that the District Court should not have abstained, stated that the constitutional question presented was substantial, and remanded the case to a three-judge district court for consideration of the constitutional question and the issues of the class action, damages and attorney fees. 478 F.2d 1405. Certiorari was denied on November 5, 1975. 414 U.S. 1004 (1973), 94 S. Ct. 361 (1973).

On September 18, 1973, Plaintiff filed his "Petition for Summary Judgment and Attorney's Fees," in the District Court, and on September 21, 1973, filed his "Proposed Findings of Fact" and "Fee Affidavit."

On November 9, 1973, Defendants filed their Memorandum in Opposition to Plaintiffs Motion for Summary Judgment," "Defendants' Brief on Propriety of Attorneys' Fees to Plaintiffs," and "Motion to Deny Class Action" with supporting "Memorandum."

On December 28, 1973, the three-judge Court granted partial judgment to Plaintiff declaring that the statute in question was unconstitutional. The Court then granted the Defendants' motion to deny class action, dissolved the three judge court and remanded the case "to the assigned single Judge DISTRICT Court for determination of the remaining issues," i.e., damages and attorneys fees. A-11.

Defendants filed their "Answer" in the District Court on January 17, 1974. On January 25, 1974, the Defendants filed their "Notice of Appeal to the Supreme Court of the United States," and the Three-Judge District Court's opinion was affirmed by this Court on June 10, 1974. 94 S. Ct. 2062 (1974).

The single judge District Court set the remaining issues for trial on July 29, 1974. On or about July 18. 1974, Plaintiff filed a "Motion for Trial by Jury" which the Court denied on July 19, 1974. Plaintiff then filed a "Motion to Remove Judge Under Rule 23" which was denied on July 23, 1974. A Trial was held on July 29, 1974, and on that date the Defendants filed their Pretrial Brief. On September 11, 1974, the District Court issued its "Special Findings of Fact, Conclusions of Law, and Judgment" which is appended hereto at pages A-1 through A-5.

Plaintiff filed his Notice of Appeal to the Seventh Circuit from the District Court's denial of the request for an award of attorney fees, but did not contest the denial of damages. Following oral argument on April 9, 1975, the Seventh Circuit issued its opinion on June 2, 1975.

The Plaintiff then filed several documents in the Seventh Circuit that were not served upon Defendants or their counsel. Included in those documents was a Petition for Rehearing with a suggestion of rehearing *en banc*. That petition was denied on July 14, 1975.

III.

Facts Relevant to Issues Presented for Review

The facts pertaining to this portion of the appeal are contained in the District Courts' "Special Findings of Fact, Conclusions of Law, and Judgment" appended hereto at pages A-1 through A-5. The facts relevant to the issue of attorney fees, as stated by the District Court, are as follows:

> "8. Mr. Satoskar sought a real estate license to supplement his income, but had no arrangements to go into the private real estate business.
>
> • • •

> 11. In the summer of 1971, Mr. Satoskar formed Geo-Services, Inc. and has since that time spent all of his working time as President of said corporation.
>
> • • •
>
> 14. Mr. Satoskar testified that the primary reason he seeks a real estate license is to enable him to secure leases on land for possible oil and/or gas exploration for Geo-Services, Inc. at a substantially reduced price which he could not receive if he approached the owners of said land in his professional capacity as a geophysicist or as President of Geo-Services, Inc."

In addition to the above facts, on December 28, 1973, the three-judge district court convened in this matter, granted partial judgment to the Plaintiff (Petitioner herein) declaring the statute in question was unconstitutional. The Court then granted the defendants' motion to deny class action, dissolved the three-judge court and remanded the case "to the assigned single Judge DISTRICT Court for determination of the remaining issues," i.e., damages and attorney fees. A-11.

REASONS FOR DISALLOWANCE OF THE WRIT

I.

THE SEVENTH CIRCUIT DID NOT ERR IN AFFIRMING THE DISTRICT COURT'S DENIAL OF ATTORNEY FEES TO PETITIONER'S ATTORNEY

A.

The American Rule and the Seventh Circuit

The Seventh Circuit held ". . . that no proper basis existed on which the District Court could have justified an award of fees . . ." 517 F.2d at 698.

The law as to attorney fees in the Seventh Circuit is set out in *Walker v. Columbia Broadcasting System, Inc.*, (7th Cir., 1971), 443 F.2d 33, where that Court said at page 35:

> "The fundamental rule both in the federal and state courts is that ordinarily the attorneys' fees of another party are not chargeable against a litigant unless a particular statute or an agreement between the parties so provides. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717-718, 87 S.Ct. 1404, 18 L.Ed.2d 475; *In re Joslyn*, 7 Cir. 224 F.2d 223, 225; *Smoot v. Fox*, 6 Cir., 353 F.2d 830; *Ritter v. Ritter*, 381 Ill. 549, 553, 46 N.E.2d 41; *Child v. Lincoln Enterprises, Inc.*, 51 Ill. App.2d 76, 83, 200 N.E.2d 751.
>
> In *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, p. 717, 87 S. Ct. 1404, p. 1406 the Court, after referring to the contrary practice in the courts of England, stated:
>
> > 'Although some American commentators have urged adoption of the English practice in this county, our courts have generally resisted any movement in that direction. The rule here has long been that attorney's fees are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefore.' "

The Court then noted that there are "limited exceptions" to the American rule which may be summarized as follows

1. Admiralty cases
2. Civil contempt cases
3. "Common fund" or derivative cases
4. A variation of the common fund cases involving a type of quasi-collateral estoppel.

Regarding these exceptions, the Seventh Circuit concluded at page 36, that:

> "All of the above exceptions involve situations where the Court deemed 'overriding considerations of justice' to compel such a result."

Rule 54(d) of the Federal Rules of Civil Procedure deals with the recovery of costs in a lawsuit. As the Seventh Circuit said in *Walker v. Columbia Broadcasting System, Inc., supra,* at page 37:

> ". . . But Rule 54(d) deals only with 'costs', and in *Fleischmann, supra,* it was definitively stated (386 U.S. at p. 720, 87 S. Ct. at page 1408):
>
> > "• • • (W)ith the exception of the docket fee provided by 28 U.S.C. § 1923(a), the statutory definition of the term 'costs' does not include attorney's fees, • • •"
>
> We are of the opinion that the discretionary power granted by Rule 54(d) pertains to the alloting of authorized costs as between the parties, but does not embrace the awarding of attorneys' fees as such."

Therefore, attorney's fees should only be allowed if there is specific statutory authorization for those fees, or if the case is extraordinary and would fall into one of the "limited exceptions".

The cases that fall into the exceptions to the general rule are primarily stockholder's derivative actions, where the corporation receives a substantial benefit from the action by the stockholder, *Bosch v. Meeker Cooperative Light and Power Association,* 101 N.W.2d 423 (1960), or where there has been deliberate, oppressive action by some party. Cases in this latter group include: *Fleischmann Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967) for deliberate patent infringement activities; *Griffin v. County School Board of Prince Edward County, Virginia* (4th Cir., 1966), 363 F.2d 206, a civil contempt action regarding the

disbursement of public funds to private segregated schools while the right to do so was being appealed to the Court of Appeals; and *Rolax v. Atlantic Coastline Railroad Co.*, (4th Cir., 1951) 186 F.2d 473, concerning a charge of racial discrimination against a union by black railroad firemen.

B.

The Common Benefit Exception

The Petitioner argues here that attorney fees should have been awarded on the basis of the "common benefit exception" to the traditional rule which denies an award of attorney fees. In discussing the "common benefit Exception", Petitioner states, at pages 5 of 6 of his Petition that:

> ". . . Consequently, it would be proper to assess the fund established by the suit to provide for the payment of the successful attorneys' fee . . ."

In the case at bar, there was no such "fund" established. The case had one lone plaintiff who was denied damages. A-4. In addition, the class action aspect of the case was denied by the three-judge district court. A-11.

Furthermore, it is doubtful that Petitioner was really seeking to advance the "public interest" as suggested by the passage quoted by Petitioner on page 6 of the Petition. The testimony of the Petitioner in the District Court was that he sought the real estate license to enable him to get leases on land for oil and gas exploration at a rate substantially reduced over that which he would have to pay if he approached the land owners as a geophysicist. See Finding of Fact No. 14, A-3. Therefore, the Petitioner had a very strong financial interest in the outcome of the lawsuit.

In *Alyeska Pipeline Service Co. v. Wilderness Society*, 95 S. Ct. 1612 (1975), this Court disposed of the "private attorney general" concept for the award of attorney fees. Further in that case at note 39, 95 S.Ct. at 1625, this Court stated:

> ". . . In this Court's common fund and common benefit decisions, the class of beneficiaries was small in number and easily identifiable. The benefits could be traced with some accuracy, and there was reason for confidence that the costs could indeed be shifted with some exactitude to those benefitting . . ."

In this case, however, such an analysis will result in the denial of the request for the award of attorney fees. Petitioner attempts to bring this case within the common benefit exception by stating on page 9 of the Petitioner that "the Indiana Real Estate Commission and the agents that it licenses" are the ultimate beneficiaries. The Respondents would submit that the Petitioner is simply grasping for a way to put himself within the common benefit exception, and there is no way he can accomplish his purpose.

The principle behind the common benefit exception is to spread the costs of litigation to those persons benefitting from such litigation. Here the only identifiable person benefitting from the litigation is the Petitioner, Vijay V. Satoskar, since the class action aspect of the suit was denied and, as stated above, no "fund" was created upon which anyone could draw.

Petitioner states that the Seventh Circuit misapplied the common benefit exception and was confused following this Court's decision in *Alyeska, supra.* In support of that state-

ment, Petitioner cites *Townsend v. Edelman,* (7th Cir., 1975) 518 F.2d 116. However, in that case, the Seventh Circuit specifically stated, at page 123:

> "Other rationales for the awarding of attorneys' fees in the absence of statutory authorization that remain viable in light of *Alyeska Pipeline Service (Id.* at —, 95 S.Ct. 1612) are inapplicable to the case at hand. Although Mr. Justice Marshall in dissent argued for an expanded view of the "common benefit" theory (*Id.* at —, 95 S.Ct. 1612) the *Alyeska Pipeline Service* majority pointed out that in the Court's common fund and common benefit decisions, "the class of beneficiaries was small in number and easily identifiable." *Id.* at —, 95 S.Ct. at 1625 n. 39 In the present case plaintiffs did not press their claim for attorneys' fees on this rationale undoubtedly because there existed an open-ended group of beneficiaries with no distinct pool of funds created by the litigation which was allocable to the entire class, as opposed to being allocable to the public as a whole, upon which the plaintiffs who prosecuted this suit could draw. *See generally* Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391-97, 90 S.Ct. 616, 24 L.Ed.2d 593 (1970). In this situation the traditional common benefit or fund rationale is inappropriate *See* Satoskar v. Real Estate Commission, 517 F.2d 696 (7th Cir. 1975)."

That statement is not the statement of a confused court and the denial of attorney fees was proper.

C.

The Eleventh Amendment

The Respondents would submit that attorney fees were not chargeable against them in this case for several other reasons. One of those reasons would be due to the applicability in this cause of the Eleventh Amendment to the Constitution of the United States.

The Eleventh Amendment provides:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

Any recovery of attorneys fees by the Petitioner would not come from the Respondents, who were merely nominal parties, but would come from the State Treasury. As this Court said in *Ford Motor Co. v. Department of Treasury of State of Indiana,* 323 U.S. 459, 65 S. Ct. 347, 89 L.Ed. 383 (1945), at page 464:

> "... When the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants" (cases omitted).

This statement was cited with approval in the case of *Edelman v. Jordan,* 94 S. Ct. 1347, 1356 (1974), where this Court stated:

> "... Thus the rule has evolved that a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." (Citing cases).

In the case of *Jordan v. Gilligan,* (6th Cir., 1974) 500 F.2d 701, cert. denied 95 S.Ct. 1996 (1975), the Sixth Circuit stated the issue at page 705:

> "Stripped of the distracting shadow questions, the case before us presents a singular, although by no means simple, issue: Does a federal court have the power to award attorneys' fees against a state or its officials acting in their official capacities in a suit brought under 42 U.S.C. § 1983 to vindicate constitu-

tional rights? To this inquiry we must respond in the negative."

The Sixth Circuit further stated at page 709:

> "Careful study of the *Edelman* opinion leads us to conclude, as did the Third Circuit, that the Eleventh Amendment prohibits the awarding of attorneys' fee against unconsenting sovereign states. We note in particular the following language from that opinion: 'Thus the rule has evolved that a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment.' *Edelman, supra,* 94 S.Ct. at 1356. Although appellees urge that attorneys' fees are analogous to costs, the taxing of which is permitted against states, the test for determining whether a particular type of relief passes muster, as set out in *Edelman*, indicates the opposite. The Amendment bars any award which is 'measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials.' *Edelman, supra,* 94 S.Ct. at 1358. In our opinion, awards of attorneys' fees fall within that classification and are, therefore, barred."

Thus, the Respondents would assert that any award of attorney fees to Petitioner is barred by the Eleventh Amendment.

D.

The State is not a Person

Attorney's fees in this case brought pursuant to 42 U.S.C. § 1983 must fail for another reason. It is well settled that the State and the Commission are not "persons" under 42 U.S.C. § 1983 and, therefore, are not subject to money damages. See *Monroe v. Pape,* 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); *Jaso v. Traczyk,* (D.C.N.D. Ind., 1973) 367 F. Supp. 434, 436; *Paige v. Pennsylvania,* (D.C. Pa., 1970) 311 F. Supp. 940.

It is quite evident here that this was a suit against the State. The District Court found in paragraph 16 of its Findings of Fact that:

> "There are no allegations in Plaintiff's Complaint of individual liability on the part of either the executive secretary of the Indiana Real Estate Commission or the members of said Commission." A-3.

In addition, the action complained of was action taken by the Commission as a Commission. The individual members of the Commission could not have taken any action which would have deprived Plaintiff of any of his rights. Further, the State of Indiana was a named Defendant in the District Court. Therefore, attorney fees could not be charged to the State in this § 1983 action.

E.

The State Was Not Guilty Of Obdurate Obstinacy

The statute in question in this case was enacted in 1949, and had never been challenged in any other legal proceeding. Petitioner stated that his motion for summary judgment in the District Court was based upon *In re Griffiths,* 93 S.Ct. 2851 (1973), a case decided by this Court on June 25, 1973. However, the Complaint was filed on February 22, 1972, some sixteen (16) months prior to *In re Griffiths supra.* The Respondents would submit that there was no mandate for the State to instantly change the statute upon the filing of the Complaint as is shown by the Order of the Seventh Circuit dated May 24, 1973:

> "We conclude that abstention was improper in this case. The district court order of May 19, 1972, is vacated and the case is *remanded with directions to con-*

> *convene a three-judge court* pursuant to 28 U.S.C. § 2281 and 2284. The *constitutional question raised in this complaint is plainly substantial . . .*" (Emphasis added.)

That Court did not remand the case to the District Court to enter judgment for Petitioner, but to convene a three-judge court and to hold further proceedings. Thus, the action by the Respondents cannot, under any stretch of the imagination, be termed "obdurate obstinacy."

The Respondents did in fact take an appeal from the decision of the Three-Judge District Court issued on December 28, 1973, even though *Griffiths* had been issued earlier. On that appeal the Respondents asserted that *Griffiths* had been tempered by this Court in the case of *Espinoza v. Farah Mfg. Co.*, 94 S.Ct. 334 (1973). That appeal was subsequently denied. 417 U.S. 938 (1974); 94 S.Ct. 3062 (1974).

The Seventh Circuit fully considered Petitioner's allegations of "bad faith" and stated that "[t]he standards for bad faith are necessarily stringent." 517 F.2d at 698. The Court further stated on that same page that:

> ". . . The Prosecution of timely appeals on the merits of a case does not show bad faith, especially where, as here, the defendants were acting on the advice of the state Attorney General, who represented them throughout the course of this litigation, and where the issue involved had been the subject of an intervening Supreme Court decision (In re Griffiths, supra, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910), which was not on all fours with the instant case. We have been referred to no evidence that would support a finding that the appeals were taken in bad faith."

Based upon all of the above, the Respondents would assert that the Seventh Circuit properly affirmed the District

Court's denial of Petitioner's request for an award of his attorney's fee.

CONCLUSION

For these reasons, the Petition for a writ of certiorari to review the judgment and order of the Seventh Circuit should be denied.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

VIJAY V. SATOSKAR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. IP 72-C-82
	)	
INDIANA REAL ESTATE COMMISSION: THOMAS DICKSON, EXECUTIVE SECRETARY, WARD DUNCAN, WILLIAM SCHMIDT, CURTIS HUMBER, HARLEY SNYDER, WILLIAM LONG, JAMES BOBILYA, DAVID FAIR, CARL MILLER, REX BREEDEN, DON McCULLOGH, EUGENE McCLAIN, FRED KELLY, WAYNE SMELTZER, MEMBERS OF THE BOARD OF DIRECTORS OF THE INDIANA REAL ESTATE COMMISSION: AND THE STATE OF INDIANA.	)	
	)	
Defendants.	)	

"SPECIAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND JUDGMENT"

This cause came on for trial to the Court on the issues of damages and attorney fees on July 29, 1974, the plaintiff appearing in person and by counsel. M. Daniel Friedland, and the defendants appearing by counsel, Donald P. Bogard, Assistant Attorney General for the State of Indi-

ana, and the Court having heard testimony of witnesses and oral arguments of counsel now finds as follows:

FINDINGS OF FACT

1. Plaintiff filed his "Complaint for Declaratory Judgment, Injunctive Relief and Damages" as an alleged class action on February 22, 1972.

2. The named defendants were the Indiana Real Estate Commission, its executive secretary, the members of the Commission and the State of Indiana.

3. In that Complaint Plaintiffs sought damages from the Defendants in the amount of $100,000.00 and reasonable attorney fees.

4. On March 9, 1972, Plaintiffs amended their Complaint to change the damage count from One Hundred Thousand Dollars "to reasonable damages for the class."

5. On December 28, 1973, the Three Judge District Court denied plaintiffs' request that this cause be maintained as a class action.

6. Defendants filed their Answer in this cause on January 17, 1974.

7. The named plaintiff, Vijay V. Satoskar, a geophysicist, first contacted the Indiana Real Estate Commission regarding a real estate license in the Spring of 1970.

8. Mr. Satoskar sought a real estate license to supplement his income, but had no arrangements to go into the private real estate business.

9. Mr. Satoskar had one job in 1970 which took approximately one month of his time.

10. During 1970 and the first half of 1971, Mr. Satoskar spent at least one half of every working day working on the thesis for his doctoral degree.

11. In the summer of 1971, Mr. Satoskar formed Geo-Services, Inc. and has since that time spent all of his working time as president of said corporation.

12. Mr. Satoskar takes no salary from Geo-Services, Inc., although he does take expenses which have never exceeded $3,000 per year.

13. Mr. Satoskar has filed no federal or state tax returns.

14. Mr. Satoskar testified that the primary reason he seeks a real estate license is to enable him to secure leases on land for possible oil and/or gas exploration for Geo-Services, Inc. at a substantially reduced price which he could not receive if he approached the owners of said land in his professional capacity as a geophysicist or as President of Geo-Services, Inc.

15. Geo-Services, Inc. has no leases for exploration of oil and/or gas.

16. There are no allegations in Plaintiff's Complaint of individual liability on the part of either the executive secretary of the Indiana Real Estate Commission or the members of said Commission.

17. Plaintiff's Complaint was drafted and filed by the Indiana Civil Liberties Union.

18. After the Indiana Civil Liberties Union withdrew from the case at plaintiff's request, Plaintiff retained his present counsel, under an oral contract at the rate of $25.00 to $30.00 per hour.

19. The fee affidavit filed by counsel for the Plaintiff computes to an hourly rate of approximately $60.00 per hour.

20. There are no provable damages in this cause.

CONCLUSIONS OF LAW

1. This cause is a suit against the State of Indiana since there are no allegations of individual liability on the part of the members of the Indiana Real Estate Commission or its executive secretary, and no showing of any such liability.

2. The State of Indiana and the Indiana Real Estate Commission are not "persons" within the meaning of 42 U.S.C. § 1983.

3. The Eleventh Amendment to the United States Constitution bars a money recovery for damages and attorney's fees by the Plaintiff from the State of Indiana.

4. The named Plaintiff has not prayed in his amended complaint for damages for himself, but only for damages for the class.

5. The law is with the Defendants.

JUDGMENT

It is therefore CONSIDERED, ORDERED, ADJUDGED and DECREED that the named Plaintiff, Vijay V. Satoskar, is not entitled to recover damages in this cause since he has not prayed for damages for himself, but only for "reasonable damages for the class", and the class action has been denied. There are no allegations and no showing of individual liability on the part of the members of the Indiana Real Estate Commission or its Executive Secretary, and therefore, this cause is an action

against the State of Indiana, and any money recovery from the State is barred by the Eleventh Amendment to the Constitution of the United States. In addition, the State and the Indiana Real Estate Commission are not "persons" within the meaning of 42 U.S.C. § 1983.

The named Plaintiff is likewise not entitled to recover the fee of his attorney.

All of which is ordered this 11 day of September, 1974.

/s/ CALE J. HOLDER

Judge, United States District Court, Southern District of Indiana, Indianapolis Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

VIJAY V. SATOSKAR, and All Others Similarly Situated, *Plaintiffs,*	)	
vs.	)	No. IP 72-C-82
INDIANA REAL ESTATE COMMISSION, THOMAS DICKERSON, Executive Secretary, WARD DUNCAN, WILLIAM SCHMIDT, CURTIS HUBER, HARLEY SNYDER, WILLIAM LONG, JAMES BOBILYA, DAVID FAIR, CARL MILLER, REX BREEDEN, DON McCULLOGH, EUGENE McCLAIN, FRED KELLY, WAYNE SMELTZER. As Members of the Board of Directors of the Indiana Real Estate Commission, STATE OF INDIANA, *Defendants.*	)	

PARTIAL JUDGMENT

The matter of the September 18, 1973, petition of the plaintiffs for summary judgment and attorney's fees with supporting memorandum together with an affidavit en-

titled "Fee Affidavit" and the affidavit of Vijay V. Satoskar heretofore filed on February 22, 1972, in support of his motion for temporary restraining order and preliminary injunction, and the issues joined therewith by the defendants' November 9, 1973 memorandum in opposition to plaintiff's motion for summary judgment; the November 9, 1973 defendants' brief on propriety of attorneys' fees to plaintiffs; and the November 9, 1973 defendants' brief on propriety of attorneys' fees to plaintiffs; and the November 9, 1973 defendants' motion to deny class action with supporting memorandum came on for the Court's ruling.

The action was commenced with the filing of the February 22, 1972 complaint for declaratory judgment, injunctive relief and damages. Jurisdiction is invoked pursuant to Title 28 U.S.C. Section 1343(3) and Title 42 U.S.C. Sections 1981 and 1983. The rights, privileges and immunities sought to be redressed are those secured by the equal protection clause of the Fourteenth Amendment and the equal protection clause of Article 1 Clause 23 of the Constitution of the State of Indiana. The declaratory judgment proceeding is pursuant to Title 28 U.S.C. Sections 2201 and 2202 seeking a declaration that an Indiana Statute IC 25-34-1-12(2) Burns Indiana Statutes Section 63-2411(2) (Cumm. Pocket Supp. 1971) is unconstitutional on its face and as applied to plaintiffs. Plaintiffs also seek a declaration that this statute denies their rights to the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States of America; a declaration that the statute is in derogation of the supremacy clause of the Constitution of the United States of America in that an immigration regulation is solely within the purview of federal regulation; and a declaration that the statute is unconstitutional as violative of plaintiffs' right to travel.

The named plaintiff is a lawfully admitted alien with a permanent visa who resided in the State of Indiana, United States of America, when the action was commenced on February 22, 1972. The named plaintiff also seeks to establish the action as a class suit under Rule 23 of the Federal Rules of Civil Procedure. The defendants are the executive secretary and the members of the Indiana Real Estate Commission of the State of Indiana as such secretary and member.

The named plaintiff was denied the right to apply for licensure as a real estate salesman by the defendants because he was an alien and not a citizen of the United States of America and because of such statute which provides:

> The Commission shall require all applicants for licensure as a real estate salesman or real estate broker to have and possess the following minimum standards to qualify for licensure . . .
>
> (2) All applicants must be citizens of the United States prior to submitting an application for licensure.

The named plaintiff alleges he suffered immediate and irreparable economic harm by being denied the right to obtain a real estate license; alleges he suffered mental anguish, emotional distress and social stigma in being denied the right to even file an application; and alleges he suffered deprivation of rights and privileges secured to him by the Constitution of the United States of America and of the federal laws. The named plaintiff prays for compensatory and punitive damages of One Hundred Thousand Dollars ($100,000.00) reasonable attorney's fees and costs of the action.

The named plaintiff prays that a declaratory judgment issue holding the statute unconstitutional and further prays for a permanent injunction restraining defendants, their agents, and successors from enforcing or otherwise applying the statute against him.

An abstention order together with certain other rulings were made by the single Assigned District Judge which were vacated on July 31, 1973 following receipt of a mandate from the United States Court of Appeals for the Seventh Circuit from an appeal in that Court's appeal number 72-1517. The members of this Three-Judge District Court were thereafter designated.

The Court finds that there is no genuine issue as to any material fact as to the factual issues of the unconstitutionality of the statute in question and the named plaintiff is entitled to a judgment as a matter of law declaring such statute unconstitutional and that defendants should be enjoined from enforcing such statute on authority of *In re Griffiths*, 41 U.S.L.W. 5143 (June 25, 1973).

The Court further finds that there is a genuine issue of material facts as to all other issues of the complaint and the named plaintiff is not entitled to a judgment as a matter of law as to such issues.

It is ORDERED, ADJUDGED, and DECREED that the following quoted provisions of the Indiana General Assembly Acts of 1949, Chapter 44, Section 11, page 129 as amended by its Acts of 1967, Chapter 356, Section 2, page 1328, and by its Acts of 1969, Chapter 418, Section 2, page 1739 (Burns Indiana Statutes Section 63-2411(2)) (IC 25-34-1-12(2)) violates the equal protection clause of the Constitution of the United States of America, and is unconstitutional:

"• • •

(2) All applicants must be citizens of the United States prior to submitting an application for licensure.

• • •."

It is FURTHER ORDERED, ADJUDGED, and DECREED that defendants as the executive secretary and as the members of the Indiana Real Estate Commission and each of them, their officers, agents, servants, employees and their successors in office be and they hereby are PERMANENTLY ENJOINED and RESTRAINED from applying and enforcing or attempting to apply and enforce, directly or indirectly the above quoted provision of such statute.

It is also FURTHER ADJUDGED that the defendants' motion to DENY the class action request of the plaintiffs be and is hereby GRANTED.

It is also FURTHER ADJUDGED that the purpose and mission of the Three-Judge District Court is at an end and the action is REMANDED to the assigned single Judge DISTRICT Court for determination of the remaining issues of the action. The defendants are ORDERED to file their answer to the complaint within twenty (20) days.

Dated this 28 day of Dec., 1973.

/s/ ROBERT A. SPRECHER

Robert A. Sprecher, Judge,
United States Circuit Court
of Appeals for the Seventh
Circuit, Designated Member
of Three-Judge Trial Court

/s/ WILLIAM E. STECKLER

William E. Steckler, Chief Judge, United States District Court for the Southern District of Indiana, Designated Member of Three-Judge Trial Court

/s/ CALE J. HOLDER

Cale J. Holder, Judge, United States District Court for the Southern District of Indiana, Assigned Trial Judge, and Member of Three-Judge Trial Court